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Sunset Review
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January 30, 2007

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Expedited Sunset Review of the Antidumping Duty Order on Pure
Magnesium (Granular) from the People's Republic of China

Summary

We have analyzed the substantive response of the domestic interested parties in the sunset review of the antidumping duty order covering pure magnesium in granular form from the People's Republic of China ("the PRC"). We recommend that you approve the positions we described in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which the Department of Commerce ("the Department") received a substantive response:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margin likely to prevail

History of the Order

On November 19, 2001, the Department published an antidumping duty order on imports of pure magnesium in granular form from the PRC, applying a rate of 24.67 percent for Minmetals Precious & Rare Minerals Import and Export/China National Nonferrous Metals Industry Trading ("Minmetals") and a country-wide rate of 305.56 percent. *See Antidumping Duty Order: Pure magnesium in Granular Form from the People's Republic of China*, 66 FR 57936 (November 19, 2001) ("Order").

The Department has conducted no administrative reviews, changed circumstance, duty absorption, or new shipper reviews since the issuance of this order. However, the Department

has conducted two scope rulings. On August 21, 2002, the Department conducted a scope ruling finding that pure magnesium in granular form that is ground in Canada or another third country from pure magnesium ingots produced in the PRC is within the scope of the order. *See Notice of Scope Rulings and Anticircumvention Inquiries*, 68 FR 7772 (February 18, 2003). On April 11, 2006, ESM Group, Inc. requested a scope clarification of whether atomized magnesium produced in the PRC from pure magnesium manufactured in the United States is within the scope of this order. On October 18, 2006, the Department determined that the atomization process does not substantially transform pure magnesium. *See Memorandum, Final Scope Ruling: ESM Group Inc.* Therefore, the Department ruled that pure magnesium that is manufactured in the United States, exported to the PRC for atomization, and returned to the United States is not within the scope of the order. Thus, the order remains in effect for all manufacturers and exporters of the subject merchandise from the PRC, except for U.S. manufactured magnesium that is atomized in the PRC.

Background

On October 2, 2006, the Department published the notice of initiation of the sunset review of the antidumping duty order on pure magnesium in granular form from the PRC pursuant to section 751(c) of Tariff Act of 1930, as amended (“the Act”). *See Initiation of Five-Year (“Sunset”) Reviews*, 71 FR 57921 (October 2, 2006). The Department received the notice of intent to participate from US Magnesium LLC¹ (“US Magnesium”), within the deadline specified in section 351.218(d)(1)(i) of the Department’s regulations. US Magnesium claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of pure magnesium in granular form. The Department also received a complete substantive response from the domestic interested party within the 30-day deadline specified in section 351.218(d)(3)(i) of the Department’s regulations. The Department received no response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department’s regulations, the Department conducted an expedited (120-day) sunset review of this order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the International Trade Commission

¹US Magnesium’s predecessor is Magnesium Corporation of America, the original petitioner in this proceeding.

(“ITC”) the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments of the interested party.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments: US Magnesium argues that revocation of this order would likely lead to continuation or recurrence of dumping because of Minmetals’ and the PRC entity’s high dumping margins and the dramatic decline in imports. *See* “Five-Year (“Sunset”) Review of the Antidumping Duty Order on Pure Magnesium in Granular Form from the People’s Republic of China: Response of US Magnesium LLC to the Notice of Initiation,” (“Response”) (November 1, 2006). US Magnesium states that dumping margins have continued to exist and have remained unchanged since the issuance of the order. *See* Response at 9-10. US Magnesium states that there is a history of the interplay between imports of pure magnesium in granular form, alloy magnesium, and pure magnesium in ingot form, such that Chinese producers starting dumping each type of magnesium until the Department imposed an antidumping order for each of these types of magnesium. *See* Response at 9-10. US Magnesium reports that at the imposition of each antidumping order, imports from the remaining forms of magnesium surged until the Department placed antidumping duty orders on all forms of magnesium. *See* Response at 9-10. US Magnesium also states since the issuance of the antidumping duty orders, including this order on pure magnesium in granular form, imports have significantly declined to levels well below the pre-order levels. *See* Response at 10. Based on the history of antidumping duty orders on magnesium from the PRC, US Magnesium states that it is clear if the order on pure magnesium in granular form were revoked, Chinese producers would “shift their focus back to this product, dedicating currently underutilized capacity to its production and export.” *See* Response at 10. Accordingly, US Magnesium claims that the Department should conclude that dumping has continued and will continue if the order were revoked.

In addition to the decline in imports and the low export prices, US Magnesium states several other factors contribute to the probability that dumping of Chinese pure magnesium would continue if the order were revoked. *See* Response at 11. Such other factors are: (1) the conditions of competition in the U.S. market would require Chinese exporters to sell pure magnesium in granular form at dumped prices; (2) the PRC is the world’s largest producer of magnesium, and the United States is the world’s largest consumer of magnesium; (3) the closure of U.S. plants is due to the unfairly priced imports from the PRC; (4) the PRC must rely on the export of pure magnesium because the Chinese demand is very small compared to its production capacity; (5) the PRC is also subject to antidumping barriers in other markets; and (6) the low Chinese export prices on pure magnesium in granular form have caused numerous producers in other countries to cease production.

Department's Position: The Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased

after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.

The Department determined rates above *de minimis* for all PRC manufacturers and exporters during the original investigation. *See* Order at 57936. The Department has not conducted any administrative reviews since the issuance of the order. Because dumping has continued at levels above *de minimis* during the period of the sunset review, the Department has determined that revocation of this order is likely to lead to continuation or recurrence of dumping.

Pursuant to section 752(c)(1)(B) of the Act, the Department considered the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order. The Department has determined that imports of pure magnesium in granular form from the PRC fluctuated in volume during the period of this sunset review and that imports are lower in volume than before the order was put in place. Using statistics provided by the ITC Dataweb, the Department finds that imports of pure magnesium in granular form from the PRC dramatically decreased in 2002 and 2003. After an increase in 2004, imports dropped again in 2005 to levels below that of 2001. *See* import statistics provided at Attachment 1. Specifically, imports of pure magnesium in granular form from the PRC dropped from 3.01 million kilograms in 2001 to 81,585 kilograms in 2002, dropped even further to 12,950 kilograms in 2003, then increased to 6.79 million kilograms in 2004, and decreased again to 1.48 million kilograms in 2005. *See* import statistics provided at Attachment 1.

The Department normally will determine that revocation of an order is not likely to lead to continuation of dumping where dumping has declined accompanied by steady or increasing imports. However, if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the order were removed. In this case, dumping remained constant with the fluctuation of imports. Therefore, the Department determines that dumping would likely continue or recur if the order were revoked.

Given these facts, it is not necessary that the Department address US Magnesium's other arguments.

2. Magnitude of the Margin Likely to Prevail

Interested Parties' Comments: US Magnesium states that it is the Department's policy to provide normally to the ITC the margin that was calculated in the investigation. *See* Response at 19-20. US Magnesium states that the original margins represent the best evidence of Chinese producers' and exporters' behavior because the Department has had no occasion to calculate a new dumping margin since the issuance of the antidumping duty order. *See* Response at 20. Therefore, US Magnesium contends that the Department should report to the ITC the dumping margin of 24.67 percent for Minmetals and a dumping margin of 305.56 percent for the PRC-wide rate for pure magnesium in granular form. *See* Response at 20.

Department's Position: The Department will normally provide to the ITC the company-specific margins from the investigation for each company. In a non-market economy case where companies that were not investigated specifically or did not begin shipping until after the order was issued, the Department normally will provide a margin based on the “country-wide” rate from the investigation. The Department’s preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the ITC. *See Potassium Permanganate from the People’s Republic of China; Five-year (“Sunset”) Review of Antidumping Duty Order; Final Results*, 70 FR 24520 (May 10, 2005).

In this case, US Magnesium requests that the Department report to the ITC the dumping margins of 24.67 percent for Minmetals and 305.56 percent for the PRC-wide rate found in the investigation. *See* Response at 20. The Department has conducted no administrative reviews to consider a more recently calculated margin. Accordingly, the Department determines that it is appropriate to report to the ITC the margin from the investigation because this rate is probative of the behavior of most of the PRC producers and exporters if the order were revoked.

Final Results of Review

The Department determines that revocation of the antidumping duty order on pure magnesium in granular form from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins for all PRC manufacturers and producers:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)

Minmetals	24.67
PRC-wide Rate	305.56

Recommendation

Based on the analysis of the substantive response received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the *Federal Register*.

AGREE ___X___

DISAGREE_____

ORIGINAL SIGNED

David M. Spooner
Assistant Secretary
for Import Administration

1/30/07

(Date)

Attachment 1

U.S. imports of pure magnesium in granular form